

JUDGE SWEET

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CIV 1695

NORTH JERSEY MEDIA GROUP INC.

Plaintiff

-against-

13 Civ.

ROGER NUNN AND JOHN DOE NOS. 1-5

Defendants

COMPLAINT AND JURY DEMAND

Plaintiff North Jersey Media Group Inc. ("NJMG"), by its undersigned attorneys, for its complaint against defendants Roger Nunn and John Doe Nos. 1-5 (collectively, "Defendants"), alleges:

Nature of the Action

1. NJMG is bringing this action to enforce its copyright in its iconic photograph of the September 11, 2001, flag raising at the World Trade Center site.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claim in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the Copyright Act, 17 U.S.C. § 101 et seq.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a).

4. Upon information and belief, Defendants are subject to the personal jurisdiction of this Court pursuant to N.Y. C.P.L.R. § 302 based upon the sale of infringing merchandise into this District.

Parties

5. NJMG is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in Woodland Park, New Jersey. NJMG is engaged in the business of news reporting. Its two daily publications, The Record and Herald News, have a daily circulation of approximately 151,000 and a Sunday circulation of approximately 175,000. In addition, NJMG publishes more than forty weekly community newspapers with a combined circulation of approximately 630,000. Its twelve magazines have a circulation of approximately 350,000. Its website, www.northjersey.com, has more than 11.5 million pages views per month, and its other website, www.bergen.com, has approximately 750,000 page views per month.

6. Upon information and belief, Roger Nunn ("Nunn") is a natural person and a resident of Fiddletown, California.

7. Upon information and belief, Nunn is the operator of the online account associated with the URL <http://www.bonanza.com/booths/adjunctgroup>.

8. Upon information and belief, defendants John Doe Nos. 1-5 are natural persons or business entities whose identities are presently unknown to NJMG.

NJMG'S COPYRIGHT

9. On or about September 11, 2001, an employee of NJMG, acting within the scope of his employment, took a photograph of the flag raising at the World Trade Center site (the "WTC Flag Raising Photograph"). The WTC Flag Raising Photograph has become an iconic image that has received international attention. Because an employee of NJMG took the WTC Flag Raising Photograph while acting within the scope of his employment, it is a "work made for hire" as defined by Section 101 of the Copyright Act. NJMG is therefore the sole owner of the copyright in the WTC Flag Raising Photograph.

Defendants' Infringing Acts

10. Defendants have, without permission, sold or induced the sale of photograph prints that are copies of NJMG's Flag Raising Photograph into New York. Defendants have sold or induced the sale of these prints on websites including, but not limited to <http://www.bonanza.com/booths/adjunctgroup>.

CLAIM FOR RELIEF

(Copyright Infringement - 17 U.S.C. § 501)

11. NJMG repeats the allegations in paragraphs 1 through 10 as if set forth in full.

12. NJMG owns, registered and received the United States Certificate of Copyright Registration No. VA 1-014-297 for the WTC Flag Raising Photograph ("WTC Flag Raising Copyright").

13. NJMG's WTC Flag Raising Copyright is valid and enforceable.

14. Defendants have infringed NJMG's WTC Flag Raising Copyright by making and distributing unauthorized copies of it in violation of 17 U.S.C. § 501.

15. Defendants' acts have irreparably damaged and, unless enjoined, will continue to irreparably damage NJMG. NJMG has no adequate remedy at law for these wrongs and injuries. NJMG is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants, employees, and attorneys and all persons acting in concert with them, from infringing NJMG's WTC Flag Raising Copyright.

16. Defendants have willfully infringed NJMG's WTC Flag Raising Copyright.

17. NJMG is entitled to recover damages sustained as a result of Defendants' unlawful conduct including Defendants' profits, or alternatively at NJMG's election, statutory damages.

18. WHEREFORE, NJMG demands judgment:

A. Preliminarily and permanently enjoining Defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing NJMG's WTC Flag Raising Copyright in violation of 17 U.S.C. § 501;

B. Awarding NJMG Defendants' profits, or alternatively, at NJMG's election, statutory damages, as a result of Defendants' infringement of NJMG's WTC Flag Raising Copyright.

C. Awarding NJMG its costs in this action, including its reasonable attorneys' fees pursuant 17 U.S.C. § 505; and

D. Granting such other and further relief as to this Court seems just and proper.

Jury Trial Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, NJMG hereby demands a trial by jury of all issues that are so triable.

Dated: New York, New York
March 13, 2013

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